

November 12, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Development and Environmental Services File No. **L98RZ006**  
Proposed Rezone Ordinance: **1999-0538**

**WILLIAM E. RUTH CORPORATION**

Application for Rezone

Location: East end of 236<sup>th</sup> Avenue Southeast between Southeast 288<sup>th</sup> Street and  
approximately Southeast 294<sup>th</sup> Street

Property Owner/  
Applicant: W. E. Ruth Corporation, *represented by*  
**William E. Ruth**  
19222 – 108<sup>th</sup> Avenue Southeast  
Renton, WA 98055  
Telephone: (253) 852-4682 Facsimile: (253) 852-4342

Agent: Barghausen Consulting Engineers, Inc., *represented by*  
**Eric LaBrie**  
18215 – 72<sup>nd</sup> Avenue South  
Kent, WA 98032  
Telephone: (425) 251-6222 Facsimile: (425) 251-8782

King County: Department of Development and Environmental Services, *represented*  
*by*  
**Karen Scharer**  
900 Oakesdale Avenue Southwest  
Renton, WA 98053  
Telephone: (206) 296-7114 Facsimile: (206) 296-6613

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary Recommendation:  
Department's Final Recommendation:

Approve, subject to conditions  
Approve, subject to conditions

**PRELIMINARY MATTERS:**

Application or petition submitted: June 26, 1998  
Complete application: July 24, 1998

**EXAMINER PROCEEDINGS:**

Pre-Hearing Conference: October 20, 1999  
Hearing Opened: November 1, 1999  
Hearing Closed: November 1, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES/TOPICS ADDRESSED:**

- Changed circumstances
- Comprehensive plan policy application
- Open space
- Density
- Forests

**SUMMARY:**

Recommends denial of request to reclassify Rural Area land from RA-10 to RA-5.

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**A. GENERAL FINDINGS**

**FINDINGS:**

**1. General Information.**

Owner/Developer:	William Ruth/W. E. Ruth Corporation 19222 – 108 <sup>th</sup> Avenue Southeast Renton, WA 98055
Engineer:	Barghausen Consulting Engineers, Inc. 18215 – 72 <sup>nd</sup> Avenue South Kent, WA 98032

Location:	East end of 236 <sup>th</sup> Avenue Southeast between Southeast 288 <sup>th</sup> Street and approximately Southeast 294 <sup>th</sup> Street
Acreage Rezone:	92.26 acres
Acreage Plat:	88.27 acres
Zoning:	Existing RA-10 to Proposed RA-5
Number of Lots:	14
Density:	1 dwelling per 5 acres
Revised Lot Sizes:	Lots are approximately 33,000 to 43,000 square feet, except for Lot 1 which will be a large parcel, 73 acres in size.

2. **Reclassification Request.** Bill Ruth/W. E. Ruth Corporation (“Applicant”) requests reclassification of 92 acres from RA-10 (Rural Area minimum lot size 10 acres) to RA-5 (Rural Area minimum lot size 5 acres).

Simultaneous with this request for reclassification, the Applicant proposes to subdivide the subject property into 15 single-family residential building lots. Fourteen of those lots would range in size from approximately 33,000 square feet to approximately 43,000 square feet. The fifteenth proposed lot, (referred to hereinafter as “Lot No. 1”) would comprise approximately 72 acres. The proposal is similar to the preliminary plat drawing appended to the Department of Development and Environmental Services (the “Department” or “DDES”) Preliminary Report to the Hearing Examiner dated October 21, 1999 (Exhibit No. 1) as attachment 1. In that preliminary plat drawing “Tract B” is now proposed as Lot No. 1. The actual proposed preliminary plat is incorporated in this hearing record as Exhibit No. 10.

3. **State Environmental Policy Act.** On August 24, 1999 the Department issued its threshold determination of non-significance for both the requested reclassification and the proposed development. The Department based its determination upon review of the entire environmental record. It concluded that the reclassification and subsequent subdivision would not cause probable significant adverse impacts upon the environment and that, therefore, an environmental impact statement would not be required. No person, agency, tribe or other entity appealed that determination.
4. **Department Recommendation.** The Department recommends that the property be reclassified as RA-5-P in lieu of the Applicant’s requested RA-5. The P-suffix addition indicates that some additional development plan review restriction would apply. In this case, the restriction recommended by the Department reads as follows:

Development of the site at a density that is greater than 1 dwelling unit per 10 acres shall require clustering of development on lots on the north and west portion of the site.

The Applicant’s accompanying subdivision proposal (preliminary plat application) complies with this recommended additional control. In its subdivision recommendation, the Department recommends a use limiting “temporary easement” over the 72 acre Lot No. 1. The purpose of that use limitation would be to temporarily preserve use of Lot No. 1 as single-family residential

or forest/forestry, uses consistent with the Rural Forest District designation for the area. As recommended, the use limiting temporary easement would “automatically terminate” upon annexation by a local city, incorporation into the urban boundary or zoning reclassification.

5. **Applicant’s Response.** The Applicant accepts the Department’s reclassification recommendation and, as indicated above, has submitted a revised preliminary plat drawing (Exhibit No. 10) intended to comply with the Department’s recommendation. In the subdivision review, however, the Applicant finds two recommended conditions of final plat approval somewhat troublesome. Recommended plat Condition No. 22 would require a note on the face of the plat acknowledging an interim conservation easement. The Applicant does not actually oppose this recommended condition, but observes that it is redundant because it addresses an administrative matter that is being resolved outside of the plat review process. Of more concern, the Applicant opposes recommended plat Condition No. 23, described above, as a temporary limitation on use of proposed Lot No. 1. This issue will be addressed in a separate report which addresses the proposed subdivision.
6. **Community Interest.** Community interest in the reclassification request (and accompanying subdivision proposal) is considerable and varied. Some members of the westerly abutting urban designated plat of Greenbrier Estates Division II, express concerns about child safety related to the proposed subdivision infiltration pond location, fencing and boundary buffering.<sup>1</sup> Some property owners located south of the subject property (also within the Rural Area, and also within the designated Rural Forest District Area) observe that the “changes in circumstances” argued by the Applicant in support of the reclassification request are not unique to the subject property, but rather apply to additional similarly situated properties south of the subject property. The King County Rural Forest Commission, created by the Council and Executive to advise the County on Rural/Forest/Forestry public interest issues opposes the reclassification. The cities of Black Diamond and Maple Valley do not look favorably upon the reclassification but certainly agree with the Department that, if the reclassification is approved, the clustering recommendation advocated by the Department should be adopted as well. All of these positions are reviewed in the findings which follow below.

#### B. KCC 20.24.190.D REQUIRED FINDINGS

KCC 21.A.44.060 requires that a zoning reclassification shall be granted only if the Applicant demonstrates that the requested reclassification complies with the criteria for approval specified in KCC 20.24.180 and KCC 20.24.190 and is consistent with the Comprehensive Plan and applicable community and functional plans. KCC 20.24.180 requires that when the Examiner renders a decision or recommendation it shall be based upon findings and conclusions and shall be consistent with the various applicable promulgations of law, regulation, policy and plans that apply.<sup>2</sup>

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<sup>1</sup> These concerns will be addressed in the Examiner’s separate Report and Decision on the proposed plat of Chateaus at Greenbrier.

<sup>2</sup> **KCC 20.24.180 Examiner’s Findings.** When the Examiner renders a decision or recommendation, he or she shall make and enter findings

KCC 20.24.190 requires additional Examiner findings specific to reclassification requests.<sup>3</sup> In this review, the parties have agreed that KCC 20.24.190.A through – 190.C do not apply. KCC 20.24.190.D contains three criteria all of which must be satisfied with “substantial evidence” before a reclassification may be granted. The Department has offered considerable analysis intended to demonstrate that the reclassification complies with KCC 20.24.180 (compliance with applicable policy, compatibility and so on). However, any review of KCC 20.24.180 (which addresses compliance and compatibility standards of any particular new zoning classification) would be pointless if no reclassification were approveable. Therefore, KCC 20.24.190 review must be addressed first.

7. **Unanticipated Substantial and Material Change.** KCC 20.24.190.D.1 sets the following criterion as the first of three mandatory reclassification review standards:

*Since the last previous area zoning or shoreline environment designation of the subject property, authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial or material change not anticipated or contemplated in the community plan or area zoning. (Emphasis added.)*

The following findings are relevant:

- a. The last area zoning applied to this property and neighboring properties occurred December 5, 1996. Ordinance No. 12533, Section 2, Paragraph G. Ordinance No. 12533 also adopts the Black Diamond Urban Growth Area as an amendment to the King County Comprehensive Plan. Ordinance No. 12533, Section 1, Paragraph E. In so doing, the Metropolitan King County Council found that, “the proposed UGA [Urban Growth Area] provides growth opportunities for the city over the next 20 years.” Ordinance 12533, Preamble, Paragraph 7. Thus, the UGA boundary that lies co-terminus with the north and west boundaries of the subject property were intended by the Metropolitan King County Council to endure until at least the year 2016.
- b. Ordinance No. 12533 also acknowledges that the actions within and pursuant to the ordinance will be consistent with the terms of the Black Diamond Urban Growth Area agreement adopted by a companion ordinance. Section 3, Paragraph B.
- c. On December 31, 1996, three and one half weeks following the Council’s area zoning action, the King County Executive signed the Black Diamond agreement (as had been anticipated in Ordinance No. 12533). These findings serve to show the inextricable inter-linkage between the December 1996 area zoning and the December 1996 Black Diamond agreement.

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of fact and conclusions from the record which support the decision and the findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with, carries out and helps implement applicable state laws and regulations and the regulations, policies, objectives and goals of the Comprehensive Plan, sub area or community plans, the zoning code, the land segregation code and other official laws, policies and objectives of King County, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

<sup>3</sup> Attachment

- d. Three months later, on March 19, 1997 previous owner Plum Creek successfully obtained a tax lot segregation dividing the subject property into 8 lots. DDES File No. L97L008. On December 31, 1997 the Applicant purchased five of those lots, the subject property, from Plum Creek, then successfully obtained a boundary line adjustment 8 months later (August 17, 1998). DDES File No. L9800065. That boundary line adjustment rearranged the existing 5 lots acquired by the Applicant. As created through tax lot segregation by the previous owner Plum Creek, at least 4 of those lots comprised 20 acres each. The fifth comprised approximately 15.8 acres. The hearing record is unclear as to how a tax lot segregation could have created a lot smaller than 20 acres. The boundary line adjustment converted those 5 large lots into *four 1 acre lots plus one large 88 acre lot*. The RA-10 classification allows such clustering of density when the 1 dwelling unit per 10 acre average density is achieved. This action resulted in an urban density cluster of 4 lots within the Rural Area at the west boundary of the subject property abutting the Urban Growth Area and the City of Black Diamond.
- e. Having completed boundary line adjustment No. L98L0065, the Applicant then filed the instant reclassification request and implementing subdivision. As now proposed, the two actions taken together would enable the Applicant to take the “remainder” 88 acre parcel created by the boundary line adjustment and develop it at cluster density once again—only at twice the density allowed by the present zoning. These two actions, if approved, would then enable the Applicant to resubdivide later the “remainder” cluster subdivision lot of approximately 72 acres. The Department recommends that resubdivision of the 72 acre remaining parcel (“Lot No. 1”) not be permitted until the area is annexed or the Urban Growth Area is redrawn to include the subject property. During the interim, which should last until the year 2016 (see Finding No. 7a, above), the Department also recommends use limitations intended to preserve residential and/or forest/forestry use of the parcel.
- f. The Applicant argues that the consistency with KCC 20.24.190.D.1 is achieved by the following:
- Extensions of public water service to the subject property, thereby making development of the subject property at urban density achievable.
  - Annexations by the City of Maple Valley and the City of Black Diamond encompassing the designated Urban Growth area. Because the north and west boundaries of the subject property are also urban growth boundaries, these annexations now abut the subject property.
  - The tax lot segregation achieved by previous owner Plum Creek on March 26, 1996, nine months *before* the last area zoning of December 5, 1996 (Ordinance No. 12533).
  - The “expectation” of annexation of the subject property based on staff discussions. In a letter dated September 22, 1998, City of Maple Valley Director of Community Development Gregory J. McCormick, commenting

on the preliminary plat proposal states, “given the proximity to the urban area and the likelihood of annexation, the County should consider allowing the Applicant to cluster the proposed lots so that the remainder of the property could be developed at a later time.” He continues, “additional development would likely happen upon annexation to either Black Diamond or Maple Valley.” Given the facts contained in Finding No. 7a, above, it must be assumed that Mr. McCormick refers to 2016 or some year after that.

- However, County wide planning Policy LU-7 states, in part, “Designated rural areas are considered to be permanent and shall not be re-designated to an urban growth area unless reviewed pursuant to the Growth Management Act<sup>4</sup>...*Annexation of rural areas to cities shall be prohibited.*” (Emphasis added.)
- According to testimony, the City of Black Diamond has reclassified properties along the west boundary to R-4, an urban density. Pursuant to the Black Diamond agreement the subject property, or most of it,<sup>5</sup> has been separated, pursuant to the Black Diamond agreement from the open space system created as one of the significant outcomes of that agreement.
- The Applicant also would argue that the December, 1996 signing of the Black Diamond agreement constitutes a change in circumstances. This action occurred three and one half weeks following the last area zoning but clearly was anticipated by the zoning action. See Finding 7c, above.

8. **Impacts “to a degree different than other properties in the vicinity such that area zoning or re-designation is not appropriate”.** KCC 20.24.190.D.2 requires a showing with substantial evidence that:

The impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area zoning or re-designation is not appropriate.

The reference to “re-designation” concerns shoreline management regulations and is not relevant here. The term “area re-zoning” refers to a study or process whereby a large area or grouping of properties is considered for reclassification together because those properties share common circumstances. The December, 1996 Ordinance No. 12533 reclassification of the subject property and other properties in the Black Diamond agreement area serves as an example. Thus, this second criterion requires that the “changed conditions or circumstances affecting the subject property” must do so in a manner unique to this particular property. If other neighboring properties are likewise affected by these same changed conditions or circumstances, this criterion suggests, an area rezoning would be more appropriate. Only when an area rezoning is *not appropriate* may the individual property reclassification be granted. The hearing record contains

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<sup>4</sup> RCW 36.70A.130 (3) requires a twenty year horizon to be “reviewed at least every ten years.”

<sup>5</sup> The hearing record contains substantial testimony regarding the actual final boundaries of the permanent County open space to be created as a result of the Black Diamond agreement. Complete boundary demarcation had not been completed at the time of this hearing. The Department and the Applicant agree that a triangular parcel comprising approximately 56,000 square feet of the southeast corner of the subject property must be allocated as open space pursuant to the Black Diamond agreement. Interested persons, neighboring property owners, argue that other areas must also be included. The issue of open space boundary demarcation is more germane to the plat review than to this reclassification review.

the following facts and arguments relevant to this criterion:

- a. The Applicant contends the changes in circumstances affect this property uniquely or more directly than other properties in the vicinity. The Maple Valley and Black Diamond annexations about this property, not the other Rural Forest District properties zoned R-10 to the south. The extension of water service benefits this property, not the similarly classified properties to the south. Further, this property contains less Black Diamond Agreement created open space than some other properties in the area.
- b. Some neighboring property owners disagree with the Applicant's assessment. William Kombol, Manager, Palmer Coking Coal Company, argues that the RA-10 classified properties lying south of the subject property are quite similar in circumstance. Palmer Coking Coal Company has a "permanent road use agreement and easement" across the subject property. Mr. Kombol argues that by declaring the subject property unique from the other neighboring R-10 properties, those properties, including those owned by Palmer Coking Coal, are prematurely misjudged as not having the very same attributes meriting reclassification.<sup>6</sup>

Roberta Falk contends that the Department erroneously claims that only this Applicant's property has the capacity to cluster lots a significant distance away from future open space planned under the Black Diamond agreement. Other lots located southward from the subject property, she argues, could be similarly developed with the clusters lying 300 to 500 feet from Black Diamond agreement designated open space.

The King County Rural Forest Commission also opposes the reclassification, arguing that all properties in southeast King County are affected by growth. The Rural Forest Commission notes that properties on the south, east and northeast sides of the subject property are all zoned RA-10. The only properties not so zoned are those within the nearby urban growth boundary and therefore should not be considered for comparison. The Rural Forest Commission argues that, "if all properties adjacent to the urban growth boundary use that proximity to justify higher density, the boundary becomes meaningless."

9. **The Public Interest.** KCC 20.24.190. D.3 states the third reclassification criterion: the requested reclassification or re-designation is *required* in the public interest. This hearing record contains considerable argument addressing *consistency with* the public interest, but very little regarding what the public interest *requires*.

- a. Arguments presented in support of the action being required in the public interest are these:
  - Without the reclassification the property would be broken up into 10 or 5 acre parcels, an action which would "foreclose wise planning" *if* the area were ever re-designated urban sometime after 2016. Wiser site planning could be achieved with a

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<sup>6</sup> Mr. Kombol also argues that the 72 acre "Lot No. 1" (previously proposed as "Tract B") leaves too much uncertainty for neighboring property owners to rely upon. This argument leads to the suggestion that *either* Lot No. 1 should be permanently reserved as open space *or* the long term development plans and authorization should be disclosed now.



single 72 acre lot, the Department suggests.

- The reclassification, if granted, it is argued, would permanently “fix” the urban growth boundary at the southeast boundary of the subject property. This argument necessarily supposes that the urban growth boundary isn’t already fixed at the west boundary of the subject property.
- b. The King County Rural Forest Commission argues that the reclassification is *not* in the public interest. It cites comprehensive plan policies R-201 and R-202 which call for achieving low densities in the Rural Area. The Rural Forest Commission argues that the Applicant has made no showing as to why doubling the density of this property benefits the public.

#### C. COMPATABILITY AND CONSISTENCY WITH APPLICABLE LAW AND POLICY

As noted above, it is not enough to demonstrate changes in circumstances unique to the subject property for which the public interest requires a reclassification. In addition, KCC 21.44.060 requires consistency with the comprehensive plan and applicable community and functional plans. KCC 20.24.180 cited in Footnote No. 2, above, imposes similar review criteria. The following findings are relevant:

10. **Residential Density.** The Department offers in its preliminary report to the Examiner a review of comprehensive plan policies deemed relevant. The Department also reviewed the proposed development for consistency with transportation plans, public services (schools, fire protection), utilities, (Seattle-King County Department of Public Health approval for septic tanks and drain fields), water supply (Covington Water District), and found the reclassification compatible with applicable law and policy. The Department also notes that on the subject property there are no significant sensitive area constraints. Thus, the Department finds the reclassification consistent with King County Comprehensive Plan Policy R-206 which states:

A residential density of one home per 5 acres shall be used in portions of the Rural Area where the land is physically suitable for development and can be supported by rural services, and does not meet the criteria in this plan for higher or lower density designations.

- a. The Department suggests further that King County Council actions affecting the property prior to 1996 support the Department’s view that the reclassification would be consistent with Policy R-206. This argument is based at least in part on the proposition that the property has not been approved for urban density and has not been approved for inclusion in the Black Diamond Agreement County Open Space.
- b. The King County Rural Forest Commission argues that County wide plan policies LU9 and LU12 mandate an effort to achieve one dwelling unit per 20 acre densities in the Rural Forest District. The subject property is included in the Rural Forest District. Obviously, achieving higher densities on the subject property would work contrary to these policies. These comments are also relevant to the public interest discussion

contained in Finding No. 9, above.

- c. The King County Rural Forest Commission is constituted to advise King County on matters relating to rural forests and forestry. It voted to oppose the reclassification with only one dissenting vote. Testimony, Kombol. While the Commission does not have the authority to review and recommend disposal of proposed land use actions in the manner for which DDES is established, the Commission certainly would be remiss if it did not provide advice in this review with respect to those subject areas for which it is charged advisory responsibility.
11. **Departmental Report Adopted.** The facts contained on pages 1 through 6 of the Department's Preliminary Report to the Examiner are accurate. Those pages are adopted and incorporated here by this reference. Copies of the Department's report (Exhibit No. 1), as well as copies of the Department's amended report (Exhibit No. 2) will be attached to those copies of this Examiner's report that are forwarded to the Metropolitan King County Council.
  12. **Other Issues.** The hearing record contains several other issues which are more relevant to the plat review than to this reclassification review. Those issues include the following:
    - a. Access to the southerly abutting (Palmer Coking Coal) property and other properties located south of the subject property.
    - b. Child safety concerns regarding proposed stormwater retention/detention Tract A, abutting 234<sup>th</sup>/236<sup>th</sup> Avenue Southeast. These concerns involve pond location, slope of pond banks, fencing and access.
    - c. Voluntary vegetated buffering along the shared boundary of Estates at Greenbrier, Division II and the proposed Chateaus at Greenbrier.
    - d. Proper permanent open space boundaries. The Applicant and DDES agree that only a 56,535 square foot triangle at the southwest corner should be designated permanent open space pursuant to the Black Diamond Agreement. One interested person argues that the Black Diamond Agreement also requires that the Bonneville transmission line easement along the north boundary of the subject property should be included in the open space dedication. Others argue that some portion of the easternmost area of the property also should be included as permanent open space.

These issues will be addressed as necessary in the Examiner's report and decision that addresses the proposed plat but will not be addressed in this reclassification report.

## CONCLUSIONS:

1. The requested reclassification does not satisfy the KCC 20.24.190.D.1 criterion for the following reasons:
  - a. The tax lot segregation obtained by previous property owner Plum Creek does not satisfy KCC 20.24.190.D.1 for two reasons. First, a change in circumstances cannot be performed by or caused by the property owner. Second, the segregation of the subject

property into 20 acre tax parcels occurred *before* the last area zoning of December, 1996.

- b. The last area zoning of the subject property and surrounding properties occurred part-and-parcel as a portion of various intentional and intentionally inter-linked actions by the Metropolitan King County Council and the City of Black Diamond. It cannot now be said that the UGA adoption or the boundaries created to implement the UGA and the Black Diamond Agreement were “unanticipated.”
  - c. Annexations by the cities of Maple Valley and Black Diamond within the UGA boundaries cannot be found “unanticipated.” In fact, the UGA adopting legislation shows that these annexations were *intended*.
  - d. The Applicant argues that the extension of Covington Water Service to the property is an unanticipated change in circumstances affecting the subject property that warrants reclassification. The Applicant and the Department have offered little to the hearing record that would explain this water service extension. If the water service extension resulted from either Black Diamond or City of Maple Valley annexations (accomplished to comprise the urban growth boundaries established by the Black Diamond Agreement) then, obviously, the water service extension is more intended and expected than unanticipated. If the water service extension cited by the Applicant resulted from the Applicant’s own action or causation—to serve the Applicant’s own lot clustering boundary line adjustment—then it barely meets the test of “substantial and material” change. Regardless of the cause of the change in circumstances, and regardless of the substantiality of the change, the water service extension cannot warrant reclassification in the absence of a showing that the action is also “*required* in the public interest.”
  - e. The “expectation of annexation” of the subject property expressed by a City of Maple Valley planning employee must be regarded as remote and speculative. If such speculations are to be called “changes in circumstances” warranting reclassification, then this standard surely will apply to thousands of properties along the urban growth boundary. The earliest likely boundary or annexation affecting this property would occur in 2016. Anticipating that possible or conceivable change so far in the future cannot be regarded as a “change in circumstances” today. In fact, the property is outside the urban growth boundary and therefore cannot be considered for annexation.
  - f. The reclassification of city properties within the urban boundary to higher levels of single-family residential urban density cannot be regarded as unanticipated. Rather, it must be regarded as the intended and probable result of drawing the urban growth boundary. It should surprise no one that urban residential density exists on the west (urban) side of the boundary and that rural densities exist on the east (rural) side of the boundary.
2. It is important to note that KCC 20.24.190.D.2 refers back to KCC 20.24.190.D.1. It does not address just *any* conditions or circumstances affecting the subject property. Rather, it addresses “the *changed* conditions or circumstances” previously discussed in KCC 20.24.190.D.1. It speaks to those *changed* conditions or circumstances affecting the subject property in a manner and to a degree different than other properties in the vicinity. The requested reclassification does not satisfy the KCC 20.24.190.D.2 criterion regarding the unique effect upon the subject property

resulting from the “changed conditions or circumstances” for the following reasons:

- a. The Applicant argues that the location of SR 169 affects the subject property in a manner and to a degree different than other properties in the vicinity such that the area rezoning is not appropriate. However, SR 169 as well as the Bonneville Power easement have been situation in their present locations for a very long time. These are not “changed conditions or circumstances” affecting the subject property.
  - b. Certainly the water service extension affects the subject property more directly than other properties. This too must be rejected, however, for the same reason indicated in Conclusion No. 1d, above.
  - c. Likewise, the changes in lot configuration performed by the Applicant as well as by the previous owner cannot be regarded as changes in circumstances uniquely effecting the subject property because changes performed by, obtained by, created by, or caused by the owner do not qualify as “changes.”
  - d. Likewise, because the city annexations were *intended* and not *unanticipated*, they are not “the changed conditions or circumstances” that qualify for this review.
3. The preponderance of the evidence does not support a conclusion that the requested reclassification or re-designation is *required* in the public interest. The requested reclassification therefore does not satisfy the third key required reclassification finding established by KCC 20.24.190.D.3. If the Comprehensive Plan contains any expression of the public interest at all, then policies R-108, R-201, R-202, R-204, LU-9, LU-12 require keeping the density as it is on this Rural Forest District land. The public interest is reviewed further in Conclusion No. 4, following.
4. Conclusions citing comprehensive plan policy are required twice: first, as an expression of the required public interest as mandated by KCC 20.24.190.D.3; and second, for policy compliance and compatibility pursuant to KCC 21A.44.060 and KCC 20.24.180. This reclassification request fails both the public interest and policy compliance tests for these reasons:
- a. Policy R-204 seeks a Rural Forest District density of one dwelling unit per 20 acres. Obviously, the requested reclassification of one dwelling unit per 5 acres directly contradicts this policy.
  - b. Policy R-215 provides for urban clustering, such as this Applicant proposes, off-set by permanent open space. As noted in Conclusion No. 5, following, the Metropolitan King County Council has provided two methods for achieving compliance with this policy. This Applicant has not pursued either. Likewise, Policy R-217 calls for the preservation of rural forest land through transfer of development rights. Again, as noted in Conclusion No. 5, the Council has adopted a means of accomplishing such transfers, a means which this Applicant has not chosen. Similarly, Policy R-217 provides for on site density transfer (as provided, for instance, by the 4:1 Program) that does not apply to this property.

- c. The parcels under consideration are within the Rural Forest District as designated by the 1994 King County Comprehensive Plan. Both the Comprehensive Plan (policies R-108 and R-204) and the County wide planning policies (policies LU-9 and LU-12) mandate an effort to achieve one home per 20 acre densities in the Rural Forest District. This reclassification request contradicts and works against those policies.

For all of these reasons, the requested reclassification cannot be found compatible with applicable Comprehensive Plan policy and cannot be found to be required in the public interest. DDES rests its recommendation on Policy R-206, a policy that allows one home per five acres when the subject Rural Area property “does not meet the criteria in this plan for higher or lower density.” The bulk of applicable policies however, clearly requires a classification at least as restrictive as the RA-10 classification already applied to this property.

5. The Metropolitan King County Council has adopted two ways to increase density abutting the east side of the urban growth boundary. The “4:1 Program” allows the Applicant an opportunity, in Council designated properties, to exchange permanent open space for urban density clusters. Such developments turn out looking much the same as the proposed development, except that the single large remainder parcel is designated as permanent open space. The second program uses Transferable Density Credit as established by 21A.55.100 through --.180. The Applicant may transfer the density from one site to another. KCC 21A.55.150.D establishes rules for “rural sending sites and rural receiving sites.”

The Applicant has sought neither of these options. Each carries a regulatory cost—the cost of transferring density from one place to another. This application seeks to avoid these Metropolitan King County Council established procedures and costs by postponing development of the remainder parcel (“Lot No. 1”) rather than making the trade in the 4:1 Program and the TDC Program. A proposal truly “in the public interest” would take advantage of these programs established by the Council.

6. Because this report recommends that the request to double the density of the subject rural property should be denied, the preliminary plat application is not reviewed here. That preliminary plat application, in the absence of this requested reclassification, would necessarily be denied for failure to comply with existing zoning. Final action on the preliminary plat proposal should be postponed until final action is taken on this reclassification request.

#### RECOMMENDATION:

DENY the requested reclassification of the subject property.

ORDERED this 12<sup>th</sup> day of November, 1999.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 12<sup>th</sup> day of November, 1999, to the following parties and interested persons:

Willis Calhoun	Karen and Robert Latunski	Jerry Prouty
Jim Chamberline	Linda Matlock	Scott Schafer
Mark Davis	Greg McCormick	Jackson Schmidt
Wilmer Davis	Eleanor Moon	Andrew W. Schwarz
Roger Dorstad	George and Wilda Morris	Karen R. Stopsen
Dean Duncan	Gregory G. Morris	Ken Thomas
Evan D. Morris, Sr.	Jack A. Morris	Cindy Wheeler
Roberta Falk	Terry L. Morris	William E. Ruth Corp.
Pat Haasi	Don Nettleton	Rick Williams
John. L. Scott Land Dept.	William and Ursula Paine	Mark Bergam
King County Environ. Health Dept.	Palmer Coking Coal Co.	Kristen Langley
Pauline Kombol	Jason Paulson	Michaelene Manion
William Kombol	Patricia Pepper	Carol Rogers
Bob and Dorothy Kubasta	Kim Pillow	Karen Scharer
Eric LaBrie	Wayne Potter	Steven C. Townsend
Benj Wadsworth	Anne Noris	

#### NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before November 26, 1999***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before December 3, 1999***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE NOVEMBER 1, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L98P0023/L98RZ006 – CHATEAUS AT GREENBRIER:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Karen Scharer and Mark Bergam. Participating in the hearing and representing the Applicant were Jackson Schmidt and Eric LaBrie. Other participants in this hearing were Don Nettleton, Andrew Schwarz, Kim Pillow, Ken Thomas, Bill Kombol and Benj Wadsworth.

The following exhibits were offered and entered into the record:

Exhibit No. 1	DDES Preliminary Staff Report (16 pages w/attachments 1-9 & 11-12), mailed 10/6/99
Exhibit No. 2	Revised Recommendation, dated 10/29/99 w/Timeline of Events attached
Exhibit No. 3	Rezone File, Rec. 6/26/98
Exhibit No. 4	Plat File, Rec. 6/26/98
Exhibit No. 5	Environmental Checklist dated 2/25/99

Exhibit No. 6	SEPA TD, issued 8/24/99
Exhibit No. 7	Revised Notice of Applications, mailed 8/5/98
Exhibit No. 8	Affidavit of Posting for Revised Notice of Applications, posting 8/11/98
Exhibit No. 9	Notice of Recommendation and Hearing, mailed 9/22/99
Exhibit No. 10	Revised Plat Map, received 10/21/99
Exhibit No. 11	Assessor Map STR 3-21-6, last revised on 5/14/97 and Assessor Map of STR 2-21-6 & STR 3-21-6, last revised on 4/1/93
Exhibit No. 12	Level I Drainage Report by Barghausen Consulting Engineers—Revised 5/25/99
Exhibit No. 13	Wetland Evaluation Report by Terra Associates, Inc., dated 6/22/98 and revised 11/16/98 and received 2/25/99
Exhibit No. 14	Wildlife and Habitat Report by Terra Associates, Inc., dated 11/16/98 and received 2/25/99
Exhibit No. 15	Geotechnical Engineering Study by Earth Consultants, Inc., received 2/25/99
Exhibit No. 16	Copy of a portion of a Kroll Map from DDES working files/map undated, with Burlington Northern Inc. ownership marked in yellow & subject property marked in blue by staff.
Exhibit No. 17	GIS Hydro & Geo Features of Property (site marked in yellow)
Exhibit No. 18	Portion of the 2/2/95 Zoning Atlas—subject property zoned RA-10
Exhibit No. 19a.	Ordinance 12065, effective 12/31/95—Zoning the site ‘Urban Reserve’—UR-P
Exhibit No. 19b.	Colored computer generated map
Exhibit No. 20	Ordinance 12533 approved 12/5/96—Comp. Plan: Rural & Zoning: RA-10
Exhibit No. 21	September 13, 1999 letter from Eric LaBrie with Notebook titled ‘Black Diamond Properties’ and containing Black Diamond Agreement dated December 31, 1996.
Exhibit No. 22	Interim Conservation Easement
Exhibit No. 23	GIS 1996 Orthographic Photo
Exhibit No. 24	Map 2 of the 1996 Black Diamond Agreement, dated 10/2/96 showing County Open Spaces
Exhibit No. 25	Fax of map from Carol Chan, KC OBSP to Dennis Higgins DDES/GIS, dated 8/30/96.
Exhibit No. 26	GIS map of open space as plotted on Chateaus at Greenbrier, prepared October 1999
Exhibit No. 27	BLA L98L0065 recorded 8/17/98—current and previous lot configuration on subject property.
Exhibit No. 28	February 25, 1999 letter from Eric LaBrie-response to request for information
Exhibit No. 29	King County Health Approval for clustered lots.
Exhibit No. 30	Correspondence received regarding rezone & plat – through the date of October 28, 1999
Exhibit No. 31	Fax from Donald Nettleton of Plum Creek to Roz Glasser, City of Black Diamond, of written correspondence and an attached map, dated October 27, 1999.
Exhibit No. 32	Plum Creek GIS colored map depicting land uses within the entire Black Diamond area (this reduction taken from a larger map dated September 17, 1996).
Exhibit No. 33	Statement prepared by William Kombol, dated November 1, 1999

